IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

CRL.A.No. 170 of 2000()

ST.491/1996 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, PERINTHALMANNA

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APPELLANT:

STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI AMJAD ALI

RESPONDENTS:

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1. APPU @ GOVINDAN, S/O.CHOZHI,
WANDUR AMSOM,
THAVAKODE DESOM.

2. I.G.SIVADAS, S/O.I.V.GOVINDAN,
AYINIKKAL, VADANAPPALLI AMSOM,
CHAVAKKAD.

BY ADV. SRI.A.SUDHI VASUDEVAN
SMT.BINDU MOHANDAS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 03/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.A.No.170 of 2000

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Dated this the 3rd day of July, 2007

J U D G M E N T

The appellant is the State that had initiated prosecution for violation of Section 56(b) of the Abkari Act that ended in the acquittal of the accused.

2. The prosecution case is that on 04/04/1995, at about 11.30 a.m., CW.1/PW.1, the Excise Inspector and party inspected arrack shop No.152/95-96 of Kalikavu Range and took samples of arrack, which on analysis was found to contain alcohol less than the prescribed standard.

3. Evidence adduced in the matter consisted of the testimony of PWs.1 and 2, and marked Exts.P1 to P3 and MO.1 sample bottle. On an examination of the evidence of PWs.1 and 2, the Excise Inspector and the Preventive Officer, the court below found that the evidence is vitiated by a number of infirmities. It

was also found that the requirement of Section 36 of the Abkari Act, that there should be two independent witnesses, was not complied with. It was also found that the column in the printed form, Ext.P1, was kept unfilled. The court has observed that the answers given by PW.1 in the cross-examination was of an irresponsible nature as he could not remember many of the relevant facts regarding the manner of sampling etc. It was also found from the chemical analysis report that the sample related to the year 1994-95, whereas the shop was inspected in 1995-96. The report also did not contain anything as to whether the sample was sealed. The court not only acquitted the accused but also has cast serious strictures on PW.1 and directed to forward the copy of the judgment for required action to the Commissioner of Excise, Thiruvananthapuram, and also to the Chief Chemical Examiner, Thiruvananthapuram, for initiating action against the Excise Inspector as well as the Chemical Analyst.

4. On an appreciation of the evidence adduced in the matter, I find that the acquittal of the accused do not call for interference

as the calculation arrived at by the court below is a possible one, in view of the discrepancies of the evidence adduced by the prosecution.

It appears that the year mentioned as 1995-96 in the chemical analysis report can only be a mistake as noted by the court below. So also the discrepancies found in the evidence of PW.1 can also be due to lapse of time. It is seen that he was examined much subsequent to the date of the incident, that is, after about three years. Hence, I find that the observation of the court below in this regard against PW.1 and the Chemical Examiner is not warranted. The same will stand deleted. The appeal is disposed of accordingly.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.A.No.170 of 2000

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J U D G M E N T

3rd July, 2007